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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NACIREMA ENVIRONMENTAL
SERVICES, INC.

Defendant.

Civil Action No.

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant Nacirema Environmental Services, Inc. ("Defendant" or "Nacirema") violated the National Emission Standard for Hazardous Air Pollutants for asbestos ("Asbestos NESHAP"), 40 C.F.R. Part 61, Subpart M, and Sections 112, 113 and 114 of the Clean Air Act ("Act"), 42 U.S.C. §§ 7412-14.

The Complaint alleges that between and including the years 2002 and 2005, Defendant demolished at least 18 buildings and other "facilities," within the meaning of the Asbestos NESHAP, 40 C.F.R. § 61.141, in New York and New Jersey, identified in Appendix A of this Consent Decree ("Facilities"). The Complaint alleges that pursuant to the Asbestos NESHAP, 40 C.F.R. § 61.145(b)(1), Defendant is required to provide EPA with written notice of its intent to demolish a facility, but failed to do so for each of the identified Facilities. The Complaint alleges that Defendant also failed to comply with a request for information regarding demolition activities issued by EPA on March 8, 2004, pursuant to Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1) ("Information Request"), and that Defendant violated an order issued by EPA on May 12, 2004, pursuant to Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3) ("Compliance Order"), requiring compliance with the Information Request.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY
ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in the District of New Jersey pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b)-(c) and 1395(a), because Defendant is incorporated in and does business in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree or such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to 40 C.F.R. Part 61, Subpart M, and 42 U.S.C. §§ 7412-14.

3. Notice of the commencement of this action has been given to the New Jersey Department of Environmental Protection, as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

5. Defendant shall provide a copy of this Consent Decree to all of its officers, directors, employees, agents, contractors, subcontractors, and any other person acting on its behalf or under its control, whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent

Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act, the Asbestos NESHAP, or in other regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

1. "Asbestos Compliance Manager" shall mean an officer, employee or other agent of Defendant designated by Defendant, subject to disapproval by EPA, to help ensure that Defendant complies with the Act, the Asbestos NESHAP and this Consent Decree, in accordance with Section V of the Decree.

2. "Complaint" shall mean the complaint filed by the United States in this action;

3. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXV);

4. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall

on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

5. “Defendant” shall mean Defendant Nacirema Environmental Services, Inc.;

6. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

7. “Facilities” shall mean the buildings and other facilities listed in Appendix A this Decree;

8. “Income” shall mean, for purposes of determining whether a residence qualifies as a Low Income Residence pursuant to Section VI (Supplemental Environmental Project), the total of any pre-tax earnings, unemployment compensation, workers’ compensation, Social Security, Supplemental Security Income, public assistance, veterans’ payments, survivor benefits, pension or retirement income, interest, dividends, rents, royalties, income from estates, trusts, educational assistance, alimony, child support, assistance from outside the household, and any other miscellaneous sources, as reported on a properly filed federal income tax return for calendar year 2005. Income does not include noncash benefits (*e.g.*, food stamps and housing subsidies), capital gains or losses, or incomes of non-relatives (*e.g.*, housemates). If a properly filed tax return for calendar year 2005 is not available, EPA may in its sole discretion approve the use of other evidence to calculate Income, such as prior year tax returns or other financial records.

9. “Low Income Residence” shall mean, for purposes of Section VI (Supplemental Environmental Project):

1. a residence (*e.g.*, detached single-family home, townhouse, rental apartment, condominium unit, cooperative unit) occupied by one person or one family which has, or

2. a residence (*e.g.*, a multi-family structure, apartment, condominium or cooperative building) occupied by individuals or families the majority of whom have,

a total annual Income less than or equal to 175% of the United States Department of Health and Human Services' ("HHS's") 2006 Poverty Guideline amount ("Poverty Level"), published at 71 *Fed. Reg.* 3148-49 (Jan. 24, 2006), for an individual or family with the same number of persons. For purposes of this definition, "family" shall mean two or more persons related by blood, marriage or lawful domestic partnership. Alternatively, "Low Income Residence" shall mean a residence occupied by one or more persons whom EPA in its sole discretion determines in writing to be of sufficiently limited financial means to qualify for the removal or repair of asbestos-containing material ("ACM") pursuant to Section VI (Supplemental Environmental Project).

10. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;

11. "Parties" shall mean the United States and Defendant;

12. "Section" shall mean a portion of this Decree identified by a roman numeral, unless specified otherwise; and

13. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

8. Within 30 days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$65,000 as a civil penalty, plus an additional sum for interest on that amount (“Interest”), at the rate specified in 28 U.S.C. § 1961 as of the date Interest begins to accrue, calculated as follows:

1. if Defendant executes and returns this Consent Decree to DOJ on or before September 15, 2006, and payment is timely, no Interest shall accrue;
2. if Defendant executes and returns this Consent Decree to DOJ by September 15, 2006, but payment is not timely, Interest shall accrue from the date 30 days after the effective date of this Consent Decree until the date of payment; and
3. if Defendant does not execute and return this Consent Decree to DOJ by September 15, 2006, Interest shall accrue from that date until the date of payment.

9. Payment of the civil penalty together with any Interest shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of New Jersey. At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-2-1-08411 and the civil action number of this case) to the United States in accordance with Section XVI (Notices).

10. Defendant shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

11. Defendant shall comply with all applicable provisions of the Act and the Asbestos NESHAP with respect to any building or other facility at which Defendant is or becomes an owner or operator of a demolition or renovation activity within the meaning of 40 C.F.R. § 61.141. Failure to comply with any applicable provision of the Act or the Asbestos NESHAP, or any requirement of this Consent Decree, shall be considered a violation of this Consent Decree subject to stipulated penalties pursuant to Section X, in addition to any other penalties that may be required by law. Nothing contained in this Consent Decree shall be a defense to or excuse any requirement of state or local law.

12. As long as Defendant performs demolition or renovation activities, within the meaning of 40 C.F.R. § 61.141, Defendant shall have a designated "Asbestos Compliance Manager." Within 20 days of lodging this Decree, Defendant shall notify EPA in writing of the name, address and telephone number of an officer, employee or other agent that Defendant has designated as its Asbestos Compliance Manager. If Defendant changes its designated Asbestos Compliance Manager, Defendant shall notify EPA of the change at least five working days before the change becomes effective, unless impracticable, but in no event later than the day the change is made. Any designation by Defendant of any Asbestos Compliance Manager shall be subject to disapproval by EPA. Within 10 days after the date of EPA's disapproval of an Asbestos Compliance Manager, Defendant shall notify EPA in writing of the name, address and telephone number of another officer, employee or agent designated as Asbestos Compliance Manager.

13. The Asbestos Compliance Manager shall have the technical expertise sufficient to adequately oversee and direct Defendant's compliance with the Act, Asbestos NESHAP and other regulations promulgated under the Act as applicable to Defendant's performance of demolition and renovation activities. The Asbestos Compliance Manager shall be familiar with all federal, state and local laws and regulations related to asbestos at or in connection with demolitions and renovations, including without limitation inspection, notification, scheduling, removal, handling, transporting, disposal, training, and record-keeping, as well as EPA-approved standards and practices for detecting asbestos, sampling for asbestos, controlling release of asbestos, worker protection, and equipment handling and decontamination procedures. The Asbestos Compliance Manager shall not be an attorney for Defendant in this matter.

14. Defendant shall ensure that commencing within 90 days after the Effective Date of this Consent Decree, the Asbestos Compliance Manager successfully completes the appropriate EPA-approved training courses in, and obtains and maintains certifications for, the disciplines of Contractor/Supervisor, Worker, Inspector, and Project Designer, set forth in 40 C.F.R. Part 763, Subpart E, Appendix C (Asbestos Model Accreditation Plan); provided, however, that the 90-day training period may be extended for good cause shown as determined in writing by EPA in its sole discretion. By requiring training and certifications in each of the above-referenced disciplines (including refresher courses as necessary to maintain those certifications), this Paragraph is intended to ensure that the Asbestos Compliance Manager has the up-to-date knowledge and expertise necessary to successfully manage and coordinate Defendant's asbestos-related compliance activities. This Paragraph is not intended to require that the Asbestos Compliance Manager obtain licenses to practice those disciplines in each of the

states in which Defendant does business. This Paragraph is also not intended to waive any licensing requirements that otherwise might apply to Defendant or the Asbestos Compliance Manager under federal, state or local law.

15. Defendant shall ensure that within 10 days after the Asbestos Compliance Manager completes any course, or obtains or renews any certification in accordance with Paragraph 14, Defendant submits to EPA documentary proof thereof.

16. Defendant shall ensure that the Asbestos Compliance Manager manages and coordinates all of Defendant's activities related to compliance with the provisions of the Act, Asbestos NESHAP and this Consent Decree applicable to demolition and renovation activity.

17. Defendant shall ensure that the Asbestos Compliance Manager acts as the primary liaison between Defendant and EPA, and all applicable state and local air pollution control agencies, with respect to the activities and operations covered, and the notices, submissions and records required, by this Decree.

18. Defendant shall ensure that the Asbestos Compliance Manager meets with EPA or its authorized representative(s) at any reasonable time and in any reasonable manner requested by EPA, in order to provide EPA with information regarding, and to otherwise assist EPA in overseeing and if necessary enforcing, Defendant's compliance with the Act, the Asbestos NESHAP and this Consent Decree.

19. Defendant shall give the Asbestos Compliance Manager full authority to carry out his or her responsibilities pursuant to this Decree, including the authority to stop Defendant's activities or operations.

20. Defendant through its Asbestos Compliance Manager shall ensure that EPA and all applicable state and local air pollution control agencies receive the asbestos-related notifications and reports required under the Act, the Asbestos NESHAP, all other applicable federal, state and local laws and regulations, and this Decree.

21. Prior to commencing any demolition or renovation activity, Defendant through its Asbestos Compliance Manager shall ensure that the facility to be demolished or renovated is thoroughly inspected for the presence of ACM, in accordance with the Act and Asbestos NESHAP, and applicable EPA policy and guidance documents, including without limitation: Guidance for Controlling Asbestos-Containing Materials in Buildings (EPA 560/5-85-024 (June 1985)); Asbestos in Buildings: Simplified Sampling Scheme for Friable Surfacing Materials (EPA 560/5-85-030a (Oct. 1985)); Guidelines for Asbestos NESHAP Demolition and Renovation inspection Procedures (Revised) (EPA 340/1-90-007 (Nov. 1990)); Volume 55 of the Federal Register at pages 48409-10 (Nov. 20, 1990); Asbestos NESHAP Adequately Wet Guidance (EPA 340/1-90-019 (Dec. 1990)); and any documents that amend or supercede them. Defendant shall also comply with any state or local requirements. Each inspection shall include, at a minimum:

1. review of blueprints and specifications for the facility, its components and contents, if available, for references to asbestos, including without limitation asbestos used in construction, additions, renovations and repairs;
2. inspection by a trained and accredited asbestos inspector ("Asbestos Inspector") of all accessible areas of the facility for the presence of ACM.

22. Commencing no later than 140 days after the Effective Date of this Consent Decree, Defendant shall have at least one on-site representative, such as a foreman, management-level person or other authorized representative of Defendant ("On-Site Representative"), present continuously during any demolition or renovation activity conducted by or on behalf of Defendant. Defendant, with the assistance of its On-Site Representative, shall be responsible for identifying any material present at a facility undergoing a demolition or renovation activity that a reasonable person in the demolition or renovation business with the training required pursuant to Paragraph 22.a would suspect might contain asbestos ("Suspect Material"), and for ensuring that any Suspect Material at such facility is handled in accordance with the Act, the Asbestos NESHAP, this Consent Decree, and any other applicable federal, state or local law or regulation.

1. Defendant through its Asbestos Compliance Manager shall ensure that, within 120 days after the Effective Date, all On-Site Representatives receive the training required by an on-site representative under the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(8), including, at a minimum:

1. applicability of regulations;
2. notification requirements;
3. ACM identification;
4. control procedures for ACM removals, including, at least, wetting, local exhaust ventilation, negative pressure enclosures, glove-bag procedures, and High Efficiency Particulate Air ("HEPA") filters;
5. waste disposal work practices;
6. reporting and recordkeeping;

7. asbestos hazards; and
8. worker protection.

2. No later than 130 days after the Effective Date, Defendant shall submit to EPA evidence that each of its On-Site Representatives have completed the required training required pursuant to Paragraph 22.a above. Such evidence shall include, without limitation:

1. the name, title, employer name, and business address of the On-Site Representative;
 2. the name, title, employer name, and business address of the person(s) who conducted the training;
 3. a copy of the curriculum of the training course completed by the On-Site Representative; and
 4. a certification of completion by the On-Site Representative of the training course signed by the trainer(s).
3. Defendant may designate additional persons to be On-Site Representatives but only after they have received the training required by Paragraph 22.a above and after Defendant has submitted to EPA a certification of completion of such training in accordance with Paragraph 22.b above.
4. At the time of commencement of such training, Defendant shall ensure that any person who provides training to an On-Site Representative pursuant to this Paragraph has successfully completed appropriate EPA-approved training courses in, and obtained and maintained certifications for, the disciplines of Contractor/Supervisor, Worker, Inspector, and Project Designer, set forth in 40 C.F.R. Part 763, Subpart E, Appendix C (Asbestos Model

Accreditation Plan). Within 10 days after completing any such course or obtaining or renewing any such certification, Defendant must submit to EPA documentary proof thereof.

5. EPA may request additional information or documentation regarding the experience and qualifications of any such On-Site Representative or trainer. Defendant shall provide such information or documentation with 10 days after receiving EPA's request.

23. EPA in its sole discretion may disapprove the use of any person as an Asbestos Compliance Manager, On-Site Representative, or On-Site Representative trainer based on insufficient training or other deficiency. Defendant may not use any person as an Asbestos Compliance Manager, On-Site Representative, or On-Site Representative trainer who has been disapproved by EPA for that position, unless and until EPA approves thereof in writing.

24. If during the demolition or renovation of a facility by or on behalf of Defendant, a Suspect Material is discovered in or on the facility, Defendant through its Asbestos Compliance Manager shall:

1. immediately suspend all demolition and renovation activity at the facility that could potentially break up, dislodge or otherwise disturb the Suspect Material;
2. within two days after such discovery, submit to EPA by regular mail and facsimile, or by express overnight mail, a written notice including the name and location of the facility at which the discovery took place and a description of the nature, extent and location of the Suspect Material;
3. cooperate in and facilitate any effort by EPA to access and inspect the facility and Suspect Material;
4. ensure that:

1. a certified asbestos inspector takes representative samples of the Suspect Material, including enough for split samples; and
2. an accredited laboratory analyzes each such sample so as to determine whether the Suspect Material does or does not contain asbestos and, if so, how much.

25. If ACM is discovered before or during a demolition or renovation, Defendant shall in all other respects comply with the notification and emission control requirements of 40 C.F.R. § 61.145(b)-(c).

26. Any sampling or analysis performed by or on behalf of Defendant pursuant to this Consent Decree shall be subject to the following:

1. Defendant through its Asbestos Compliance Manager shall use quality assurance, quality control (“QA/QC”), and chain of custody procedures for all samples in accordance with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” (EPA/240/B-01/003, March 2001) “Guidance for Quality Assurance Project Plans (QA/G-5)” (EPA/600/R-98/018, February 1998), and any subsequent amendments. Amended guidelines shall apply only to procedures conducted after such notification. Defendant shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Defendant in implementing this Consent Decree. Defendant shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods, as documented in the “Contract Lab Program [“CLP”] Statement of Work for Inorganic Analysis” and the “Contract Lab Program Statement of Work for Organic Analysis,” dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; provided, however, that upon approval by EPA,

Defendant may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Defendant shall ensure that all laboratories used for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Defendant shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

2. Upon request, Defendant shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Defendant shall notify EPA in writing not less than 10 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Defendant to take split or duplicate samples of any samples taken as part of EPA's oversight of Defendant's work under this Decree.

3. Defendant shall submit to EPA copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Defendant with respect to any planned demolition or renovation activity, unless EPA agrees otherwise in writing.

4. Notwithstanding any other provision of this Consent Decree, the United States shall retain all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under the Act, the Asbestos NESHAP, and any other applicable statutes or regulations.

27. In lieu of sampling, Defendant may elect to treat any material in the facility as if it contains asbestos, provided that in its treatment of such material Defendant complies with the Act, Asbestos NESHAP and all other laws and regulations applicable to the handling, removal and disposal of ACM and asbestos emission control.

28. Defendant shall not resume any demolition or renovation activity suspended at a facility pursuant to Paragraph 24.a above, unless and until:

1. Defendant submits to EPA a certification that ACM is not present in or on the facility, with supporting documentation and, if requested by EPA, any and all additional sampling results or other evidence in Defendant's possession, custody or control that tends to support or contradict that certification; or

2. Defendant submits to EPA a certification that any ACM present at the facility was handled and removed in accordance with the Asbestos NESHAP, 40 C.F.R. § 61.145(c), with supporting documentation and, if requested by EPA, any and all other evidence in Defendant's possession, custody or control that tends to support or contradict that certification.

29. Even if ACM is not discovered in a facility before its demolition, Defendant shall submit to EPA a written notice of intention to demolish the facility at least 10 working days before commencing any demolition activity, in accordance with the Asbestos NESHAP, 40 C.F.R. § 61.145(b).

30. All notices of demolition or renovation submitted by Defendant to EPA shall, at a minimum, include all information required by 40 C.F.R. § 61.145(b)(4)(i)-(xvii).

31. Within two days after Defendant learns of any change to the scheduled starting or completion date of a demolition or renovation activity, or to the scheduled starting or completion

date of asbestos removal work (or any other activity that could break up, dislodge or otherwise disturb Suspect Material or ACM), Defendant shall submit to EPA an amended version of the notice required by the Asbestos NESHAP, 40 C.F.R. § 61.145(b), including the new date(s).

32. In addition to the training requirements for Asbestos Compliance Manager, On-Site Representative, and On-Site Representative trainer set forth above, Defendant through its Asbestos Compliance Manager shall ensure that:

1. any person employed, retained or used by Defendant to inspect or sample facilities for the presence of ACM shall have successfully completed an EPA-approved training course for asbestos inspectors;

2. any person employed, retained or used by Defendant to remove or repair ACM, including without limitation stripping, removal, handling, clean-up, air monitoring, transportation or disposal activities, shall have successfully completed an EPA- or State-approved training course for asbestos abatement workers and be certified or licensed to do such work, in accordance with federal, state and local law; and

3. any person employed, retained or used by Defendant to perform demolition, renovation or ACM removal or repair activity otherwise complies at all times with applicable licensing, certification and training requirements, in accordance with federal, state, and local laws and regulations.

33. Within 30 days of the Effective Date of this Consent Decree, Defendant shall incorporate the following into all of its contracts for demolition, renovation and ACM removal or repair services:

Nacirema Environmental Services, Inc. shall keep until at least five years after the date of execution of this contract a copy of the original notice and any revised notice prepared by the [owner, operator or contractor] in order to ensure that proper notice of any demolition or renovation activity, or removal or repair of asbestos-containing material, was sent to the U.S. Environmental Protection Agency at least 10 working days prior to the initiation of any such activity.

34. All demolition, renovation and ACM removal or repair contracts, signed after the Effective Date of this Consent Decree, between Defendant and any other owners or operator of a demolition activity, including without limitation facility owners, general contractors, demolition contractors, and asbestos abatement contractors, shall specify the Asbestos NESHAP by name and citation and shall provide that all notifications required by the Act, the Asbestos NESHAP, and any other applicable law or regulation shall be submitted to EPA as required thereby.

35. At EPA's request, Defendant shall submit to EPA copies of its contracts for demolition, renovation and ACM removal or repair services reflecting the revisions required by Paragraphs 33 and 34 this Consent Decree.

36. Defendant through the Asbestos Compliance Manager shall ensure that copies of the Asbestos NESHAP and other applicable federal, state and local asbestos regulations, written notifications to EPA and state or local air pollution control agencies, written summaries of any inspection(s) conducted to determine the presence of ACM at a facility to be demolished or renovated, and a copy of this Consent Decree are maintained at the facility until the date of completion of any demolition or renovation thereof.

37. All documents and records relating to the inspection, survey, sampling, and/or demolition and/or renovation activity shall be maintained at Defendant's principal place of business for at least five years. Upon request, a copy of such records shall be provided to EPA.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

38. Defendant shall implement a Supplemental Environmental Project ("SEP"), involving the removal or repair of ACM in Low Income Residences, as provided in this Section VI. The SEP shall be completed within two years after the Effective Date of this Decree. The purpose and effect of the SEP shall be to restore and protect the environment through the removal or repair of ACM in Low Income Residences within the immediate geographic vicinity of the Facilities listed in Appendix A of this Consent Decree. In implementing the SEP, Defendant shall spend not less than \$65,000 in Eligible SEP Costs. "Eligible SEP Costs" include the costs of planning and implementing the SEP so as to achieve Satisfactory Completion (as defined below), but shall not include inventory on hand, overhead, additional employee time and salary, administrative expenses, legal fees, contractor oversight, payments made or costs incurred by Defendant for products or services reimbursed by any third party, or payments made or costs incurred by third parties except those that are reimbursed by Defendant and that otherwise qualify as Eligible SEP Costs.

39. Prior to commencement of any SEP work at any Low Income Residence, Defendant shall submit to EPA for approval a proposed SEP work plan for that Low Income Residence. Defendant shall commence SEP work at a Low Income Residence no sooner than the date of approval by EPA of a SEP work plan for such Low Income Residence pursuant to Section VIII (EPA Approval of Plans and Other Submissions) of this Decree. Each SEP work plan shall, at a minimum, include (a) all information specified under the heading "Work Plan" in Appendix B of this Decree and (b) a proposed deadline for each milestone listed in Appendix B.

40. Defendant shall achieve the Satisfactory Completion of the SEP in accordance with the requirements of this Consent Decree. "Satisfactory Completion" shall mean:

1. the expenditure of not less than \$65,000 in Eligible SEP Costs,
2. on the removal or repair of ACM,
3. from one or more Low Income Residences (as defined in Paragraph 7.i),
4. each of which is located within a county containing one or more Facilities

listed in Appendix A of this Decree (*i.e.*, Essex, Hudson, Union, Middlesex, Mercer or Monmouth County in New Jersey, or Westchester, Queens or Staten Island County in New York),

5. including without limitation the achievement of all milestones listed in Appendix B for each Low Income Residence,

6. without charge or at below-market price,

7. as provided in this Consent Decree, including without limitation, all EPA-approved work plans and specifications included in or prepared under this Decree, and any modification thereto.

41. Defendant may use contractors or consultants in planning and implementing the SEP.

42. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

1. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and represents a fair estimate of the costs necessary to implement the SEP;

2. that, as of the date of executing this Decree, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to

perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

3. that the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

4. that Defendant has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action; and

5. that Defendant will not receive any reimbursement for any portion of the SEP from any other person.

43. SEP Completion Report

1. No later than two years after the Effective Date of this Consent Decree, Defendant shall submit a SEP Completion Report to the United States, in accordance with Section XVI (Notices). The SEP Completion Report shall contain the following information:

1. a detailed narrative description of the SEP as implemented, including without limitation the nature, location and extent of asbestos removed or mitigated and, to the extent that asbestos was removed, the location and method of its disposal;

2. a description of any problems encountered in completing the SEP and the solutions thereto;

3. an itemized accounting of all costs incurred in performing the SEP, including without limitation all costs incurred in achieving each Appendix B milestone for each Low Income Residence, with supporting documentation, including sufficient information for EPA to determine whether such costs qualify as Eligible SEP Costs;

4. a certification that Defendant has not, and will not, deduct any SEP costs in calculating its federal and state income taxes;

5. a certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree; and

6. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

44. EPA may, in its sole discretion, require information or documentation in addition to that described in the preceding Paragraph (*e.g.*, invoices or purchase orders), in order to determine the adequacy of SEP completion or eligibility of SEP costs, and Defendant shall provide such information or documentation.

45. After receiving the SEP Completion Report, the United States shall notify Defendant whether or not Defendant has achieved Satisfactory Completion of the SEP. If Defendant has not achieved Satisfactory Completion of the SEP, stipulated penalties may be assessed under Section X.

46. Disputes concerning whether Defendant has achieved Satisfactory Completion of the SEP and whether the costs for which Defendant seeks credit are Eligible SEP Costs may be resolved under Section XII (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

47. Each submission by Defendant required under this Section shall be signed by the Asbestos Compliance Manager, or by a Nacirema officer with knowledge of the SEP, and shall bear the certification language set forth in Paragraph 52, below.

48. Any public statement, oral or written, in print, film, or other media, made by Defendant (including any employee, officer or agent thereof) making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States v. Nacirema Environmental Services, Inc., Civil Action No. _____ (D.N.J.), taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act and asbestos regulations." In the space provided in the preceding sentence, Defendant shall insert the number assigned to this civil action by the Court.

VII. REPORTING REQUIREMENTS

49. Defendant shall submit the following reports ("Quarterly Reports"):

1. Within 30 days after the end of each calendar-year quarter (*i.e.*, by April 30, July 30, October 30, and January 30 of each year) after lodging of this Consent Decree, until termination of this Decree pursuant to Section XX, Defendant shall submit to EPA a written report regarding the preceding quarter that shall include:

1. with respect to Section V (Compliance Requirements):

(1) a narrative description of any compliance measures taken pursuant to Section V;

(2) the identification of any problems encountered or anticipated, together with implemented or proposed solutions; and

(3) a description of the status of any federal, state or local permit applications; and

2. with respect to Section VI (Supplemental Environmental Project):

(1) a narrative description of any activities undertaken pursuant to Section VI, including, at a minimum, a description of measures taken to achieve each milestone set forth in Appendix B for each Low Income Residence;

(2) an itemized accounting of all costs incurred in performing the SEP, including without limitation all costs incurred in achieving each Appendix B milestone for each Low Income Residence, since the previous report, with supporting documentation, including sufficient information for EPA to determine whether such costs qualify as Eligible SEP Costs;

(3) the identification of any problems encountered or anticipated, together with implemented or proposed solutions; and

(4) a description of the status of any federal, state or local permit applications.

2. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree or of any applicable permits, Defendant shall notify the United States of such violation and its likely duration, in writing, within five working days of the day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Defendant becomes aware of the cause of the violation. Nothing in this

Paragraph 49 or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section XI (Force Majeure).

50. Whenever any violation of this Consent Decree or of any applicable permits, or any other event affecting Defendant's performance under this Decree, may pose a threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

51. All reports and notices shall be submitted to the persons designated in Section XVI (Notices).

52. Each report and notice submitted by Defendant under this Section shall be signed by a Nacirema official and shall include the following certification immediately above the official's signature:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

53. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act, by the Asbestos NESHAP, or by any other federal, state, or local law, regulation, permit, or other requirement.

54. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

55. After review of any plan, report or other item which Defendant is required to submit to EPA for approval pursuant to this Consent Decree, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Defendant modify the submission; or (e) any combination of the above.

56. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 55(a), (b), or (c), Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA, subject only to its right to invoke the Dispute Resolution procedures set forth in Section XII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies Defendant's submission to cure the deficiencies pursuant to Paragraph 55(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section X (Stipulated Penalties).

57. Resubmission

1. Upon receipt of a notice of disapproval pursuant to Paragraph 55(d), Defendant shall, within five days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section X, shall accrue during the five-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 58 and 59.

2. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 55(d), Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Defendant of any liability for stipulated penalties under Section X (Stipulated Penalties).

58. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Defendant shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XII (Dispute Resolution).

59. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Defendant shall be deemed to have failed to submit its initial plan, report, or item timely and adequately unless Defendant invokes the dispute resolution procedures set forth in Section XII (Dispute Resolution) and EPA's action is overturned pursuant to that

Section. The provisions of Section XII (Dispute Resolution) and Section X (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section X.

60. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

IX. INDEMNIFICATION

61. The United States does not assume any liability by entering into the agreement memorialized in this Consent Decree. Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any person acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. Further, Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any person acting on its behalf or under its

control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Defendant in carrying out activities pursuant to this Consent Decree. Neither Defendant nor any such contractor shall be considered an agent of the United States. The United States shall give Defendant notice of any claim for which the United States plans to seek indemnification pursuant to this Paragraph, and shall consult with Settling Defendants prior to settling such claim.

62. Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Defendant and any person for performance of SEP work, including, but not limited to, claims on account of delays in performance of such work. In addition, Defendant shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Defendant and any person for performance of SEP work, including, but not limited to, claims on account of work delays.

X. STIPULATED PENALTIES

63. Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,000 per day for each day that the payment is late, in addition to the interest specified in Paragraph 8. Late payment of the civil penalty shall be made in accordance with Paragraph 8. Stipulated Penalties shall be paid in accordance with Paragraph 72. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for Stipulated

Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 8.

64. Defendant shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section XI (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

65. Compliance Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of a requirement of Section V (Compliance Requirements) above:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$3,000	15th through 30th day
\$5,000	31st day and beyond

66. Reporting Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting requirements of Section VII:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,500	15th through 30th day
\$2,500	31st day and beyond

67. SEP Compliance

1. If Defendant has spent less than \$65,000 in Eligible SEP Costs, as provided in Section VI (Supplemental Consent Decree), within two years after the Effective Date of this Decree, Defendant shall pay a stipulated penalty equal to the difference between the amount of total eligible SEP costs incurred by Defendant and the amount set forth in Paragraph 38.

2. If Defendant has completed the SEP, but has failed to achieve Satisfactory Completion of the SEP, Defendant shall pay \$30,000, in addition to any penalty required under Subparagraph a, above.

3. If Defendant halts or abandons work on the SEP, the Defendant shall pay a stipulated penalty of \$90,000 in addition to any penalty required under Subparagraph a, above, and any penalties owing under Subparagraph d, below, for milestones missed up to the time that the penalty under this Subparagraph accrues. The penalty under this Subparagraph shall accrue as of the date specified for completing the SEP or the date performance ceases, whichever is earlier.

4. If Defendant fails to comply with the schedule for implementing the SEP, including without limitation any deadline set forth in Section VI of this Consent Decree or in any EPA-approved work plan included in or prepared under this Decree, Defendant shall pay

Stipulated Penalties for each such violation, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$3,000	15th through 30th day
\$5,000	31st day and beyond

Subject to Paragraph 67.c, above, such penalties shall accrue from the date Defendant was required to meet each such milestone, until compliance with the milestone is achieved.

68. Subject to the provisions of Paragraph 67(a)-(c), above, Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until Satisfactory Completion is achieved or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. Defendant shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand.

69. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due it under this Consent Decree.

70. Stipulated Penalties shall continue to accrue as provided in Paragraph 68, above, during any Dispute Resolution, but need not be paid until the following:

1. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision or order.

2. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing,

together with interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

3. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 days of receiving the final appellate court decision.

71. Defendant shall pay Stipulated Penalties for missed milestones, or other noncompliance, as applicable, occurring between the date of lodging and the Effective Date of this Consent Decree, within 30 days of the Effective Date of this Decree.

72. Defendant shall, as directed by the United States in its demand, pay Stipulated Penalties owing to the United States by EFT in accordance with Section IV, Paragraph 8, above, or by certified or cashier's check in the amount due, payable to the "U.S. Department of Justice," referencing DOJ case number 90-5-2-1-08411 and United States Attorney's Office file number _____, and delivered to the United States Attorney's Office, District of New Jersey, Financial Litigation Unit, 970 Broad Street, 7th Floor, Newark, New Jersey 07102.

73. Defendant shall not deduct Stipulated Penalties paid under this Section in calculating its federal income tax.

74. If Defendant fails to pay Stipulated Penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

75. Subject to the provisions of Section XIV of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for

Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Act or the Asbestos NESHAP, Defendant shall be allowed a credit for any Stipulated Penalties paid against any statutory penalties imposed for such violation.

XI. FORCE MAJEURE

76. A "force majeure event" is any event beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

77. Defendant shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendant shall also provide written notice, as provided in Section XVI of this Consent Decree (Notices), within seven days of the time Defendant first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendant's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendant's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendant from asserting any claim of force majeure.

78. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Defendant to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XIX (Modification).

79. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendant, the United States' position shall be binding, unless Defendant invokes Dispute Resolution under Section XII of this Consent Decree. In any such dispute, Defendant bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event, that Defendant gave the notice required by Paragraph 77, that the force majeure event caused any delay Defendant claims was attributable to that event, and that Defendant exercised best efforts to prevent or minimize any delay caused by the event.

XII. DISPUTE RESOLUTION

80. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

81. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be

considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

82. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

83. The United States shall serve its Statement of Position within 45 days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

84. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVI of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The

motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

85. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

86. In any dispute brought under Paragraph 84, Defendant shall bear the burden of demonstrating that its position clearly complies with this Consent Decree, the Act, the Asbestos NESHAP, and any other applicable law or regulation. The United States' position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

87. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 70, above. If Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. INFORMATION COLLECTION AND RETENTION

88. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree

(including any facility at which Defendant may in the future perform demolition or renovation activities), at all reasonable times, upon presentation of credentials, to:

1. monitor the progress of activities required under this Consent Decree;
2. verify any data or information submitted to the United States in

accordance with the terms of this Consent Decree;

3. obtain samples and, upon request, splits of any samples taken by

Defendant or its representatives, contractors, or consultants;

4. obtain documentary evidence, including photographs and similar data; and
5. assess Defendant's compliance with this Consent Decree.

89. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant at any of the facilities. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

90. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relates in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, the United States may request copies of any documents, records, or other information required to be maintained under this Paragraph.

91. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

92. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

93. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

94. This Consent Decree resolves only the civil claims for the violations alleged in the Complaint filed in this action. This Consent Decree does not in any manner limit the rights or remedies available to the United States for any criminal violations.

95. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 94. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act, the Asbestos NESHAP or other implementing regulations, or under other federal laws or regulations, except as expressly specified in Paragraph 94. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, any facility at which Defendant is or was the owner or operator of a demolition or renovation activity, whether related to the violations addressed in this Consent Decree or otherwise.

96. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401, *et seq.*, or of the Asbestos NESHAP, or with any other provisions of federal, State, or local laws, regulations or permits.

97. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

98. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XV. COSTS

99. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to enforce any provision of this Consent Decree.

XVI. NOTICES

100. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made by express overnight mail, by hand delivery, or by regular U.S. mail with facsimile or e-mailed copy (scanned as a .pdf file or in another form agreed upon by the Parties), as follows:

To the United States:

Section Chief
c/o David L. Weigert, Esq.
Environmental Enforcement Section
U.S. Department of Justice
Re: DJ # 90-5-2-1-08411

For Regular U.S. Mail with Facsimile or E-Mail:

P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Fax: (202) 616-2427
E-Mail: david.weigert@usdoj.gov

For Express Overnight Mail or Hand Delivery:

ENRD Mailroom - Room 2121

601 D Street, N.W.

Washington, D.C. 20004

Phone: (202) 514-0133

and

Regional Counsel

c/o John F. Dolinar, Esq.

U.S. Environmental Protection Agency

Region 2

290 Broadway, 16th Floor

New York, NY 10007-1866

Phone: (212) 637-3204

Fax: (212) 637-3199

E-Mail: dolinar.john@epa.gov

To EPA:

Regional Counsel

c/o John F. Dolinar, Asst. Regional Counsel

U.S. Environmental Protection Agency

Region 2

290 Broadway, 16th Floor

New York, NY 10007-1866

Phone: (212) 637-3204

Fax: (212) 637-3199

E-Mail: dolinar.john@epa.gov

and

Theresa A. Spano

Environmental Engineer

U.S. Environmental Protection Agency

Region 2

290 Broadway, 21st Floor

New York, NY 10007-1866

Phone: (212) 637-4049

Fax: (212) 637-3998

E-Mail: spano.theresa@epa.gov

To Defendant:

Anthony Novello
Vice President
Nacirema Environmental Services, Inc.
211-217 West 5th St.
P.O. Box 183
Bayonne, NJ 07002
Phone: (201) 823-3300
Fax: _____
E-Mail: anovello@naciremagroup.com

and

Alan S. Ashkinaze, Esq.
Law Offices of Alan S. Ashkinaze
Three University Plaza, Suite 207
Hackensack, NJ 07601
Phone: (201) 342-8787
Fax: (201) 488-7313
E-Mail: ashkinaze@earthlink.net

101. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

102. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVII. EFFECTIVE DATE

103. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVIII. RETENTION OF JURISDICTION

104. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders

modifying this Decree, pursuant to Sections XII and XIX, or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION

105. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by both Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court. The terms and dates contained in Appendix B of this Decree may be modified upon written agreement of the Parties without Court approval, unless any such modification effects a material change to the terms of this Consent Decree or materially affects the Defendant's ability to meet the requirements of this Decree.

XX. TERMINATION

106. After Defendant has maintained continuous satisfactory compliance with the requirements of the Act, the Asbestos NESHAP, and this Consent Decree for a period of three years after the Effective Date of this Consent Decree, has achieved the Satisfactory Completion of the SEP required by Section VI of this Consent Decree, and has paid the civil penalty and any accrued Stipulated Penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

107. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be

terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

108. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section XII of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 82 of Section XII, until 60 days after service of its Request for Termination.

XXI. PUBLIC PARTICIPATION

109. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice.

XXII. SIGNATORIES/SERVICE

110. Each undersigned representative of Defendant and the United States certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

111. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

112. Defendant agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

113. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIII. INTEGRATION

114. This Consent Decree, its Appendices, and any work plan submitted thereunder constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXIV. FINAL JUDGMENT

115. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

XXV. APPENDICES

116. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the list of Facilities identified in the Complaint; and

“Appendix B” is the list of SEP milestones required for each Low Income Residence.

Dated and entered this __ day of _____, 2006.

UNITED STATES DISTRICT JUDGE
District of New Jersey

THE UNDERSIGNED PARTY enters into this Consent Decree in the above-captioned matter of United States v. Nacirema Environmental Services, Inc. (D.N.J.).

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: _____

ELLEN M. MAHAN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

DAVID L. WEIGERT (DW 8862)
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
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CHRISTOPHER J. CHRISTIE
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District of New Jersey

SUSAN J. STEELE (SJS 7042)
Assistant U.S. Attorney
Chief, Civil Division
U.S. Attorney's Office
970 Broad Street, Suite 700
Newark, NJ 07101
(973) 645-2920

Date:

3/13/87

ERIC SCHAAF

Regional Counsel

U.S. Environmental Protection Agency

Region 2

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Of Counsel:

JOHN F. DOLINAR

Assistant Regional Counsel

U.S. Environmental Protection Agency, Region 2

Office of Regional Counsel, Air Branch

290 Broadway, 16th Floor

New York, NY 10007-1866

THE UNDERSIGNED PARTY enters into this Consent Decree in the above-captioned matter of
United States v. Nacirema Environmental Services, Inc. (D.N.J.).

FOR DEFENDANT NACIREMA ENVIRONMENTAL SERVICES, INC.:

Date: 9/13/06

ANTHONY NOVELLO
Vice President
Nacirema Environmental Services, Inc.
211-217 West 5th St.
P.O. Box 183
Bayonne, NJ 07002
(201) 823-3300

Agent Authorized to Accept Service on Behalf of Defendant Nacirema
Environmental Services, Inc.:

Date: 9/14/06

ALAN S. ASHKINAZE, ESQ. (ASA) *ASA*
Law Offices of Alan S. Ashkinaze
Three University Plaza, Suite 207
Hackensack, NJ 07601
(201) 342-8787

APPENDIX A

Facilities Identified in Complaint

<u>No.</u>	<u>Year(s) of Demolition</u>	<u>Facility</u>
1	2002	Maher Terminal Port Newark, NJ
2	2002	Ashley Remi 11th & Clinton Streets Hoboken, NJ 07030
3	2002	Transcontinental Steel 7212 Kennedy Blvd. West New York, NJ 07093
4	2002-2003	MTA/LIRR East Side Access Superior Reed Buildings A, B and C Queens, NY
5	2003	Eckerd Site for Early Childhood Center #44 Elizabeth School District 288 North Broad Street Elizabeth, NJ
6	2003	Morecraft warehouse Duncan Ave. Jersey City, NJ 07305
7	2003	Home Depot (Kajima) 2171 Forest Avenue Staten Island, NY
8	2003	Nova Development 122 Newark Street Newark, NJ
9	2003	South Beach Boardwalk Staten, Island, NY

10	2003-2004	Beach Point Club 900 Rushmore Ave. Mamaroneck, NY 10543-4599
11	2004	State of New Jersey Columbus School Trenton, NJ
12	2004	Nova Development Prospect Avenue East Orange, NJ
13	2004	Edison Properties 30 Bank Street Newark, NJ
14	2004	Clara Mass Hospital Parking Garage 1 Clara Mass Drive Bellville, NJ
15	2004-2005	Former Palace Play Building 210-226 Cookman Ave. & 201 Lake Ave. Asbury Park NJ 07712
16	2004-2005	Raritan Toll Plaza Garden State Parkway Sayreville, NJ
17	2005	Outerbridge Crossing Toll Plaza Staten Island, NY
18	2005	Union Toll Plaza Garden State Parkway Union, NJ

APPENDIX B

Supplemental Environmental Project Milestones Required for Each Low Income Residence

<u>No.</u>	<u>Milestone</u>
1.	<p><u>Work Plan</u>: Submit to EPA for approval a detailed work plan, including without limitation:</p> <ul style="list-style-type: none"> a. <u>Residence</u>: the address of the Low Income Residence at which Defendant plans to perform an ACM removal/repair project, in accordance with the SEP provisions of the Consent Decree; b. <u>Owner</u>: the name(s), address(es) and phone number(s) of the owner(s) of such Low Income Residence; c. <u>ACM Professional</u>: the name, address, phone number and proposal of licensed, bonded, insured asbestos abatement professional(s) designated by Defendant to perform the removal/repair work; d. <u>Scope of Work</u>: a detailed narrative describing the scope of work to be performed in removing or mitigating ACM at the Low Income Residence; e. <u>ACM</u>: type(s) and quantity(ies) of ACM to be removed or mitigated; f. <u>Method</u>: proposed method(s) of ACM removal or repair; g. <u>Disposal</u>: proposed method(s) and location(s) for disposal of any removed ACM; h. <u>Deadlines</u>: proposed deadlines for performing each task listed in the work plan and scope of work, including without limitation milestones (2) through (7), below.
2.	<p><u>Permit Applications</u>: Submit to EPA copies of completed, filed applications for any permits required by federal, state and local law or regulation, including without limitation demolition permits and construction permits.</p>
3.	<p><u>Permits</u>: Submit to EPA copies of any required permits issued by the appropriate federal, state or local governmental entity.</p>
4.	<p><u>Work Site Preparation</u>: Prepare work site, including without limitation:</p> <ul style="list-style-type: none"> a. <u>Seals</u>: If required by federal, state or local law, seal all vents, drains, fan units, motors, belt housings, light switch fixtures, etc. with critical barriers composed of two layers of 6-mil fire retardant polyethylene sheeting. b. <u>Decontamination Systems</u>: If required by federal, state or local law, construct all necessary asbestos decontamination systems.
5.	<p><u>Removal/Repair</u>: Remove/repair all ACM from/in proposed work areas.</p>
6.	<p><u>ACM Clean-Up</u>: Clean up and load out any and all removed ACM.</p>
7.	<p><u>Disposal</u>: Transport all removed ACM to an EPA-approved landfill.</p>